IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 9388 of 2007(P)

AGAINST THE ORDER DATED 12/03/2007 IN EP 5/2007 IN OS.234/1999 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER:

M.A.EBRAHIM, AGED 51 YEARS,
S/O.ABDUL KHADER, MAYUNNIYIL HOUSE,
ERAMALLOOR KARA, ERAMALLOOR VILLAGE,
KOTHAMANGALAM TALUK.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

K.P.MAKKAR, AGED 60 YEARS,
S/O PAREETH, KUZHIPPLLIL HOUSE,
CHERUVATTOOR KARA, ERAMALLOOR VILLAGE.

BY ADV. SRI.P.K.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF JUDGMENT DTD. 11.12.2002 OF THE MUNSIFF'S COURT, MUVATTUPUZHA, IN O.S.NO.234/99.

EXT.P2: COPY OF EXECUTION PETITION NO.5/07 FILED BY RESPONDENT IN O.S.234/99.

EXT.P3: COPY OF OBJECTION FILED BY PETITIONER AGAINST EXT.P2 E.P.

EXT.P4: COPY OF PROOF AFFIDAVIT ALONG WITH DEPOSITION FILED BY PETITIONER.

EXT.P5: COPY OF CASH VOUCHER FOR RECEIPT OF HONORARIUM BY PETITIONER AS PRESIDENT OF A RURAL C-OPERATIVE BANK FOR NOVEMBER, 2006.

EXT.P6: COPY OF CASH VOUCHER OF HONOURARIUM RECEIVED BY PETITIONER FOR DECEMBER, 2006.

EXT.P7: COPY OF CASH VOUCHER OF HONORARIUM RECEIVED BY PETITIONER FOR JANUARY, 2007.

EXT.P8: COPY OF CASH VOUCHER OF HONORARIUM RECEIVED BY PETITIONER FOR FEBRUARY, 2007.

EXT.P9: COPY OF ORDER DTD. 12.3.2007 OF THE MUNSIFF COURT, MUVATTUPUZHA IN E.P.NO.5/07 IN O.S.NO.234/99.

RESPONDENT' S EXHIBITS: NIL

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// TRUE COPY //

M.N.KRISHNAN, J

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W.P.(C) No.9388 OF 2007

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Dated this the 24th day of July, 2007

JUDGMENT

This writ petition is filed to set aside the order passed by the learned Munsiff, Muvattupuzha in E.P.No.5 of 2007 in O.S.No.234 of 1999, whereby a warrant of arrest is issued against the judgment debtor. The contention of the judgment debtor is to the effect that he is functioning as the President of a Co-operative Bank and he is earning only Rs.1,000/- from the bank as pocket money. He admitted that he is having 46 cents of property in which there is a concrete building consisting of four shops. As per the direction of this court, an amount of Rs.50,000/- is now deposited by the judgment debtor before the court below. The decree debt comes about Rs.1,30,000/-. It is contended that untenable contentions will not be taken in the sale proceedings as well. Since there is another equally effective method for the realisation of the decree amount, the order of arrest need not be implemented now.

Therefore the said order is set aside and the matter is remitted back to the trial court with a direction to permit the decree holder to withdraw

Rs.50,000/- which is already in deposit and then direct the decree holder to proceed with minimum required property that will be sufficient to discharge the decree debt by sale after completing the procedural formalities for sale as contemplated under Order XXI of the Code of Civil Procedure. The parties shall appear before the trial court on 20.8.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-